

**FILED**

**AUG 08 2011**

**Clerk, U.S. District and  
Bankruptcy Courts**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SHARIF MOBLEY  
c/o National Security Counselors  
1200 South Courthouse Road, Suite 124  
Arlington, VA 22204,

Plaintiff,

v.

DEPARTMENT OF JUSTICE  
950 Pennsylvania Avenue, NW  
Washington, DC 20530,

Defendant.

Case: 1:11-cv-01437  
Assigned To : Howell, Beryl A.  
Assign. Date : 8/8/2011  
Description: FOIA/Privacy Act

\* \* \* \* \*

**COMPLAINT**

Plaintiff Sharif Mobley brings this action against Defendant Department of Justice pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *et seq.*, as amended ("FOIA"), the Privacy Act, 5 U.S.C. § 552a, *et seq.* (collectively "FOIA/PA"), the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

**JURISDICTION**

1. This Court has both subject matter jurisdiction over this action and personal jurisdiction over Defendants pursuant to 5 U.S.C. § 552(a)(4)(B), 552a(g)(1)(D), and 28 U.S.C. § 1331.

**VENUE**

2. Venue is appropriate under 5 U.S.C. § 552(a)(4)(B), 552a(g)(5), and 28 U.S.C. § 1391.

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**PARTIES**

3. Plaintiff Sharif Mobley is a U.S. citizen and was a resident of the state of New Jersey prior to his incarceration in the “Central Prison” in Yemen.

4. Defendant Department of Justice (“DOJ”) is an agency within the meaning of 5 U.S.C. § 552(e), and is in possession and/or control of the records requested by Plaintiff which are the subject of this action.

**CAUSE OF ACTION**

**(RECORDS DENIAL)**

5. Plaintiff repeats and realleges the allegations contained in all paragraphs set forth above.

6. On 22 July 2010, Plaintiff by and through counsel submitted to the DOJ Office of Legal Counsel (“OLC”) a FOIA/PA request for records about his seizure and detention in Yemen and about the role of the U.S. government in his and others’ situations.

7. On 13 September 2010, OLC acknowledged receipt of this request and assigned it Request No. FY 10-73.

8. On 8 April 2011, OLC informed Plaintiff that it had identified thirteen responsive records and was withholding all thirteen in their entirety under FOIA exemption (b)(1) and eleven in their entirety under FOIA exemption (b)(5), citing the deliberative process and attorney-client privileges.

9. OLC did not invoke any Privacy Act exemptions to justify its withholding determinations, nor did it provide any identifying information about the withheld records.

10. On 23 May 2011, Plaintiff's counsel Kel McClanahan "McClanahan") sent an email to OLC confirming that the request was to be processed under both FOIA and the Privacy Act and requesting a list of the withheld records in accordance with established case law.

11. On 24 May 2011, OLC informed McClanahan that it allegedly did not locate any responsive records in Privacy Act systems of records. OLC also stated, "With respect to your request for a description of the records that were withheld, it would not be appropriate for us to provide such a description because the records are classified."

12. On 26 May 2011, in an attempt to forestall this litigation, McClanahan sent an email to OLC asking, "As the scope of this request is somewhat broader than just records about Mr. and Mrs. Mobley, please clarify: do any of the withheld records directly refer to him or his family? I am not asking if they are 'located in a system of records' or anything similar; I simply need to know if they are general records about renditions and the like, or if they directly discuss Mr. Mobley."

13. On 26 May 2011, OLC replied to McClanahan's email, stating, "Because these are classified documents, we are not at liberty to respond to the question you ask in your email below."

14. On 31 May 2011, Plaintiff submitted an administrative appeal of OLC's determination to the DOJ Office of Information Policy ("OIP"), specifically complaining about OLC's refusal to provide a list of withheld records and requesting that OIP "[p]lease provide us with a legally sufficient denial letter as soon as practicable."

15. On 10 June 2011, OIP acknowledged Plaintiff's appeal and assigned it Appeal No. AP-2011-02085.

16. An agency is required by law to provide “a statement of what the agency will release and will not release, *including a list of the documents that are releasable and withheld*” with every determination that records are to be withheld in their entirety. *See Shermco Indus. v. Sec’y of the U.S. Air Force*, 452 F. Supp. 306, 317 n.7 (N.D. Tx. 1978) (“A person cannot effectively appeal a decision about the releasability of documents . . . if he is not informed of at least a list of the documents to which he was denied access . . . and why those decisions were made. Denial of this information would in all likelihood be a violation of due process as well as effectively gutting the reasons for applying the exhaustion doctrine in FOIA cases.”); *see also Va. Transformer Corp. v. DOE*, 628 F. Supp. 944, 947 (W.D. Va. 1986) (“determination” response sent to a person requesting information under FOIA must include at least “a statement of what the agency will release and will not release, including a list of the documents that are releasable and withheld . . .”), quoting *Shermco*; *Reith v. IRS*, No. 80-87, 1980 U.S. Dist. LEXIS 14188, \*13 (N.D. Ind. Sept. 10, 1980) (same); *Marschner v. Dep’t of State*, 470 F. Supp. 196, 199 (D. Conn. 1979) (same).

17. Plaintiff does not currently intend to challenge OLC’s withholding determinations, but does insist on his due process right to a list of the records withheld in their entirety. OLC has denied him this right, forcing him to file this lawsuit to obtain a *Vaughn* index from DOJ.<sup>1</sup>

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<sup>1</sup> Plaintiff’s current reluctance to challenge these withholdings is based on an assumption that OLC acted in good faith when withholding the responsive records. Should Plaintiff’s faith be undermined by DOJ’s *Vaughn* index, however, Plaintiff reserves his right to challenge some or all of the withholdings. Absent such an event, Plaintiff intends to consider this case resolved upon his receipt of the *Vaughn* index. Had OLC provided him with a list of the withheld records when one was requested, there is a high likelihood that this Complaint never would have been filed.

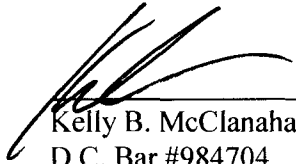
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Sharif Mobley prays that this Court:

- (1) Order the Department of Justice to immediately provide Plaintiff and the Court with a legally sufficient *Vaughn* index;
- (2) Order preliminary and permanent injunctive and/or declaratory relief as may be appropriate;
- (3) Award reasonable costs and attorneys' fees as provided in 5 U.S.C. § 552(a)(4)(E), 28 U.S.C. § 2412(d), or any other applicable law;
- (4) Expedite this action in every way pursuant to 28 U.S.C. § 1657(a); and
- (5) Grant such other relief as the Court may deem just and proper, including, but not limited to, ordering the Department of Justice to release records to Plaintiff which he has identified after receipt of its *Vaughn* index as not properly exempt.

Date: July 28, 2011

Respectfully submitted,



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